

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARK DUBLINO,

*Plaintiff,*

v.

SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE, DEPUTY  
BRIAN THOMPSON, DEPUTY FRANK GELSTER,  
SGT. MR. CROSS, SGT. MR. ROBINSON, DEPUTY  
MR. P. GIARDINA, DEPUTY SHAWN WILSON,

*Defendants.*

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**ANSWER TO AMENDED  
COMPLAINT WITH  
JURY TRIAL DEMAND**

Case No. 6:19-cv-6269-DGL

Defendants SGT. JUSTIN BIEGAJ, SGT. ROBERT DEE, DEPUTY BRIAN THOMPSON, DEPUTY FRANK GELSTER, SGT. MR. CROSS, SGT. MR. ROBINSON, DEPUTY MR. P. GIARDINA, DEPUTY SHAWN WILSON, by their attorney, MICHAEL A. SIRAGUSA, ESQ, Erie County Attorney, by Erin E. Molisani, Esq., Assistant County Attorney, of Counsel, answer plaintiff's Amended Complaint as follows:

1. Answering paragraph 1 of the Amended Complaint, defendants deny the allegations contained therein.
2. Answering paragraph 2 of the Amended Complaint, defendants deny the allegations contained therein.
3. Answering paragraph 3 of the Amended Complaint, defendants deny the allegations contained therein.
4. Answering paragraph 4 of the Amended Complaint, defendants deny the allegations contained therein.
5. Answering paragraph 5 of the Amended Complaint, defendants deny the allegations contained therein.

6. Answering paragraph 6 of the Amended Complaint, defendants deny the allegations contained therein.

7. Answering paragraph 7 of the Amended Complaint, defendants deny the allegations contained therein.

8. Answering paragraph 8 of the Amended Complaint, defendants admit that plaintiff was moved to keeplock, and deny knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 8.

9. Answering paragraph 9 of the Amended Complaint, defendants deny knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 9.

10. Answering paragraph 10 of the Amended Complaint, defendants are unable to comment on the portions of the allegations which contain legal conclusions; to the extent a response is required, defendants deny them. As to the remaining allegations in paragraph 10 of the Amended Complaint, defendants deny them.

11. Answering paragraph 11 of the Amended Complaint, defendants deny knowledge or information sufficient to form a belief as to the first two sentences of paragraph 11. As to the last two sentences of paragraph 11, defendants deny the allegations contained therein.

12. Answering the unnumbered paragraph underneath paragraph 11, defendants submit that these are legal conclusions and/or a demand for relief not requiring a response; to the extent a response is required, defendants deny them.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

13. Each of the causes of action fail to state of cause of action upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

14. Each of the causes of action are time barred in whole or in part by the applicable statute of limitations and/or filing deadlines.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

15. Plaintiff has failed to exhaust his administrative remedies.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

16. If these answering defendants are found to liable to the plaintiff for damages, their liability will be 50% or less of the total liability assigned to all persons liable.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

17. Upon information and belief, any injuries or damages sustained by plaintiff as alleged in the Amended Complaint were caused or contributed to by the negligence, carelessness or other culpable conduct of the plaintiff. Accordingly, plaintiff should be barred from recovery if his injuries and damages were caused entirely by reason of the culpable conduct on the part of the plaintiff or, in the event that plaintiff is entitled to recover, the amount of damages otherwise recoverable should be diminished by the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused or contributed to said injuries and damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

18. These answering defendants are immune from the instant suit and immune from any liability to plaintiff for damages, since the answering defendants acted towards plaintiff in good faith and with objectively reasonable belief that their actions were lawful and not in violation of any of plaintiff's constitutional rights. Consequently, plaintiff's claims must be dismissed.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

19. Upon information and belief, some or all of the damages alleged in plaintiff's Complaint are barred or subject to the qualifications and limitations of the provisions of both Federal and State Law.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

20. Plaintiff's recoverable damages, if any, should be reduced by reason of plaintiff's failure to mitigate his damages.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

21. The alleged conduct as set for in plaintiff's Amended Complaint, in whole or in part, was properly within the discretionary authority committed to the answering defendants to perform their official functions and the relief prayed for would constitute an improper intrusion by the federal judiciary into said discretionary authority.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

22. Defendants have at all times acted in conformity with all Federal and State constitutional statutory and/or regulatory provisions.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

23. Defendants at all times relevant hereto, acted without malice and under the reasonable belief that their actions were proper and in accordance with existing law. At all times relevant hereto, defendants acted in good-faith in the lawful exercise of the discretion committed to them under Federal and/or State law and are immune from liability. Furthermore, defendants did not violate any clearly established statutory or constitutional rights of plaintiff which a reasonable person would have known, and therefore are entitled to qualified immunity.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

24. Plaintiff's claims are barred by the doctrines of laches, collateral estoppel and/or *res judicata*.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

25. That any force used upon plaintiff was applied in a good-faith effort to maintain or restore discipline.

**DEMAND FOR JURY TRIAL**

26. A trial by jury is hereby demanded on all issues in this matter.

**WHEREFORE**, defendants demand judgment as follows: (1) dismissing the Amended Complaint herein; (2) directing that plaintiff's damages, in the event that plaintiff is entitled to recover, be diminished by the proportion which the culpable conduct of plaintiff bears to the culpable conduct which caused or contributed to said damages; (3) granting such other and further relief in favor of defendants as the Court deems just and proper, together with the costs and disbursements of this action.

DATED: Buffalo, New York  
October 2, 2019

**MICHAEL A. SIRAGUSA**  
*Erie County Attorney*

By: /s/ Erin Molisani  
Erin E. Molisani, Esq.  
Assistant County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202  
Telephone: (716) 858-2216  
Email: erin.molisani@erie.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2019, I electronically filed the foregoing with the clerk of the District Court using its CM/ECF system, and on the same date I mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participant at the following address, which is his last known address:

Mark T. Dublino  
18-B-0793  
Auburn Correctional Facility  
PO Box 618  
Auburn, New York 13021

Mark T. Dublino  
18-B-0793  
Wende Correctional Facility  
3040 Wende Road  
Alden, New York 14004

DATED: Buffalo, New York  
October 2, 2019

**MICHAEL A. SIRAGUSA, ESQ.**  
*Erie County Attorney*

By: /s/ Erin Molisani  
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